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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Jack O. CARTNER

Serial No.: 09/587,197

Group Art Unit: 3671

Filed: June 5, 2000

Examiner: M.C. Petravick

For: **MOWER HEAD WITH MOVABLE GUARD**

Attorney Docket No.: CRTZ 2 00017-1

MAIL STOP Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**TRANSMITTAL OF
REPLY BRIEF
AND
REQUEST FOR ORAL HEARING**

Dear Sir:

In connection with the above-entitled case, attached is a check for payment of Patent and Trademark Office fees in the amount and for the purpose indicated below:

(1)	Reply Brief &	\$ 0.00
(2)	Request for Oral Hearing (in triplicate)	\$500.00

The Commissioner is hereby authorized to charge any other fees which may be required or credit any overpayment to Deposit Account No. 06-0308.

03/15/2005 HALI11 00000056 09587197

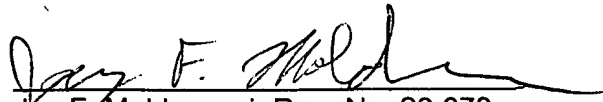
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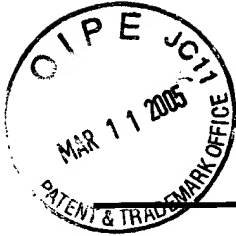
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Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

Date: 11 Mar 2005


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Under 37 C.F.R. § 1.8, I certify that this **Appellant's Reply Brief & Request for Oral Hearing** (in triplicate) is being

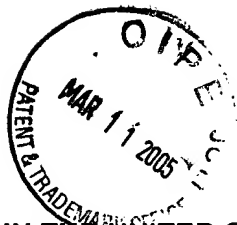
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Date
March 11, 2005

Signature
<i>Barbara Brazier</i>
Printed Name
Barbara Brazier



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR(S) : Jack O. Cartner
TITLE : MOWER HEAD WITH MOVABLE
GUARD
APPLICATION NO. : 09/587,197
FILED : June 5, 2000
CONFIRMATION NO. : 8327
EXAMINER : M. C. Petravick
ART UNIT : 3671
LAST OFFICE ACTION : January 14, 2005
ATTORNEY DOCKET NO. : CRTZ 2 00017-1
Cleveland, Ohio 44114-2518

RULE 37 C.F.R. § 41.47 REQUEST FOR ORAL HEARING

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

An oral hearing is requested in the above-identified matter. An Appeal Brief was filed on October 14, 2004. An Examiner's Answer was filed on January 14, 2005.

In accordance with Rule 37 C.F.R. § 41.20(b)(3), a check in the amount of **\$500.00** is enclosed.

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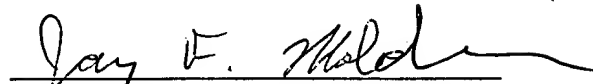
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Barbara Brazier

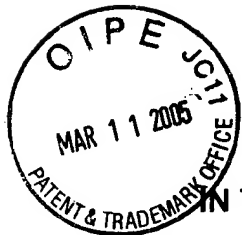
Notification of a time and setting for the Oral Hearing is anxiously awaited.

Respectfully submitted,
FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

Date: 11 Mar 2005


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INVENTOR(S) : Jack O. Cartner

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RULE 37 C.F.R. § 41.41 APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief – Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is in furtherance of the Notice of Appeal that was filed in this case on May 17, 2004 and the Appeal Brief filed on October 14, 2004.

The fees required under 37 C.F.R. §1.17 and any required petition for extension of time for filing this Reply Brief and fees therefore are dealt with in the accompanying Transmittal of Reply Brief.

Appellant files herewith a Reply Brief in connection with the above-identified application wherein claims 10, 11, 13, 17, 19, 39, 40 and 65-73 were finally rejected in the final Office Action mailed April 6, 2004. An Appeal Brief was filed on October

14, 2004. An Examiner's Answer was mailed on January 14, 2005. What follows is Appellant's Reply Brief (submitted in triplicate) in accordance with 37 C.F.R. §41.37.

I. Real Party in Interest (37 C.F.R. §41.37(c)(1))

The real party in interest in the subject Appeal is the Inventor named in the caption of this Brief (Jack O. Cartner). Mr. Cartner is the owner and president of MoTrim Inc. of Cambridge, Ohio.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(2))

There are no other applications involved in an appeal or interference before the U.S. Patent and Trademark Office from which the present application bases its priority, or any case which bases its priority upon the present application that will directly affect or will be directly affected by, or will have a bearing on the Board's decision in this Appeal.

III. Status of Claims (37 C.F.R. §(37 C.F.R. §41.37(c)(3))

The status of the claims set forth after the final Office Action mailed April 6, 2004 was and is as follows: allowed claims: **none**, rejected claims: **10, 11, 13, 17, 19, 39, 40, 65-73**. The present Appeal is directed specifically to independent claims 65, 68, 72, and 73 and dependent claims 10, 17, 19, 40, 70 and 71.

IV. Status of the Amendments (37 C.F.R. §(37 C.F.R. §41.37(c)(4))

No amendments to the claims were made after the final Office Action of April 6, 2004.

V. Summary of the Invention (37 C.F.R. §(37 C.F.R. §41.37(c)(5))

The present application is directed to a mower head having a deck with a plurality of sides. A cutting blade is rotatably mounted to the deck on an axis which extends through the deck. The deck is disposed above and generally parallel to the blade. A guard assembly comprises a guard movably mounted to the deck.

In all the embodiments, the guard is located at a single corner of the deck. That corner is located outboard of the boom on which the mower head is mounted, see FIGURE 6.

The guard has a top surface which, in the first embodiment, is located in the same plane as the top surface of the deck. In one embodiment, the guard includes a first wall which comprises an approximately straight edge and a second wall which comprises a plurality of angled sections.

In operation, the guard is lifted out of the cutting path of the mower head through a pivoting motion along the hinge by the actuating member. The guard is lifted at an angle with respect to the path of travel of the deck and is pulled toward the center of the deck (see FIGURE 6, pg. 10 of specification). The blade then extends beyond the side walls of the deck through an opening and is able to cut larger vegetation, such as trees, shrubs and the like.

A second embodiment is directed to a mower head with a top surface of a guard being located in a different plane from a top surface of a deck. A side of the deck adjacent the guard can vary in shape with respect to the guard. Thus, the side can have an extension protruding under the guard and over a blade, thereby covering more of the blade when the guard is in the open position. (See FIGURES 4A and 4B, pages 10 and 11 of the specification).

A third embodiment is directed to a mower head having a deck with a plurality of angled sections. A guard also has a plurality of angled sections which matingly interconnect with the angled sections of the deck side. The angled sections of the deck side protrude further over the top of the blade. This provides additional

shielding of the blade, as well as preventing debris from flying up from the blade during cutting.

VI. Issues (37 C.F.R. §(37 C.F.R. §41.37(c)(6))

Whether claim 68 is indefinite under 35 U.S.C. § 112.

Whether claims 17, 65, 68 and 73 are unpatentable under 35 U.S.C. §102 over U.S. Patent No. 3,496,707 (Kobey).

Whether claims 10 and 19 are unpatentable (presumably) under 35 U.S.C. § 103 over Kobey in view of U.S. Patent No. 5,657,620 (Thagard).

Whether claim 72 is unpatentable under 35 U.S.C. §103(a) over Kobey in view of the MoTrim Boom Mower brochure (MoTrim).

Whether claims 68 and 69 are unpatentable under 35 U.S.C. §103(a) over Kobey in view of U.S. Patent No. 5,048,275 (Fassauer).

Whether claims 19, 40, 70 and 71 are unpatentable under 35 U.S.C. § 103(a) over Kobey in view of Fassauer, further in view of Thagard et al.

VII. Arguments 37 C.F.R. §41.37(c)(7))

In the original grounds of rejection, the Examiner rejected claim 68 as being indefinite under 35 U.S.C. § 112, second paragraph. The Examiner rejected claims 17, 65, 68 and 73 under 35 U.S.C. § 102(b) as being anticipated by Kobey. Claims 10, 19, 39, 40, 67, 70 and 71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobey in view of Thagard. Claim 72 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobey in view of the MoTrim Boom Mower Brochure. The appellant respectfully disagrees.

In new grounds of rejection, the Examiner rejected claims 68-69 under 35 U.S.C. §103(a) as being unpatentable over Kobey in view of Fassauer (U.S. Patent

No. 5,040,275). Claims 19, 40 and 70-71 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kobey in view of Fassauer, and further in view of Thagard.

1. Summary of Arguments

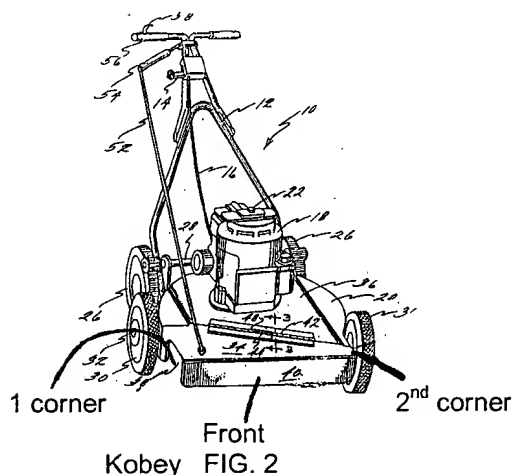
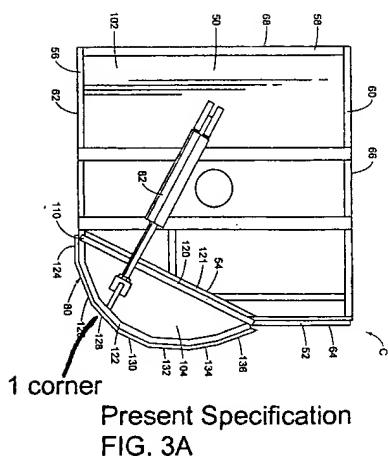
None of the applied four references, Kobey, Thagard, Fassauer or MoTrim, in any combination, renders unpatentable the subject matter recited in pending claims 10, 11, 13, 17, 19, 39, 40 and 65-73. Furthermore, claim 68 is not indefinite under 35 U.S.C. § 112. Appellant believes that the arguments presented in the Appeal Brief regarding claims 65, 10, 68, 17, 19, 72 and 73 are meritorious. They will not be re-argued in this Reply. Only Appellant's arguments with regard to the new ground of rejections are detailed below.

2. Appellant's Arguments Re: Claim 68

Claim 68 recites that the guard includes a plurality of discretely angled sections which angled sections together form a single corner of the deck. Further, the deck is recited as having four corners and the guard as being attached to two of the four sides of the deck.

In the embodiment of Figure 3A of the present specification (shown below), there are a number of discretely angled sections 124-136. These form one corner of the mower. The deck and guard are separate parts attached to each other. When so attached, the guard comprises a single corner of the deck as well as the mower head.

The guard extends over an angled edge of the deck and forms one of the corners of the deck, when attached to the deck. The guard forms one corner of the deck, when it is attached to the deck. This is shown in the Figure 3A of the present specification as seen on the beginning of page 6:



In contrast, in Kobey (Fig. 2) (shown above) the discretely angled sections form the front wall as well as parts of two adjacent side walls. Thus the guard forms two corners of the Kobey deck, not a single corner. "Corner" and "single" are simple terms. As is evidenced from Fig. 2 of Kobey, its guard or lid 32, has a plurality of discretely angled sections which form two corners of its deck. Indeed, the Examiner concedes that Kobey does not teach four corners and contends that it has three corners. But, without its guard 34 being counted as two of the corners on its deck, how many corners does the Kobey mower have? That is why the Examiner had to add Fassauer, for its teaching that a mower deck can be rectangular, and thus have four corners.

But even if Fassauer's geometry were adopted by Kobey, the Kobey guard or lid 34 still would constitute two of the corners of the mower deck, not a single corner, as recited in claim 68. Of course, there is no teaching in Fassauer of a movable guard comprising any corner of the Fassauer mower deck since Fassauer teaches an air floating mower. If any corner of the Fassauer mower deck were to be lifted, the air flow would be interrupted and the floating ability of the device would be destroyed. Thus, even the combination of Kobey and Fassauer does not teach a mower deck with a single corner formed by pivotable guard, as recited in claim 68.

The benefit of retracting a guard on corner of the mower deck is to reduce the risk of injury to the operator (see page 3, lines 8-11; page 5, lines 6-9; page 10, lines 15-22).

Moreover, claim 69 is dependent on claim 68 and is also in condition for allowance.

3. Appellant's Arguments Re: Claim 70

Claim 70 patentably defines over Kobey and Fassauer even in view of Thagard since none of these three references teaches, either alone or in combination, a guard forming a single corner of a mower deck and including a movable flap depending from the guard.

4. Appellant's Arguments Re: Claim 40

Claim 40 patentably defines over Kobey and Fassauer even in view of Thagard since none of these three references teaches, either alone or in combination, a resilient one-piece flap depending from a movable guard forming a single corner of a mower deck.

5. Appellant's Arguments Re: Claim 71

Claim 71 patentably defines over Kobey and Fassauer even in view of Thagard since none of these references teach, either alone or in combination, a movable flap depending from a guard forming a single corner of a mower deck.

6. Appellant's Arguments Re: Claim 19

Claim 19 patentably defines over Thagard, Kobey, and Fassauer since none of these references, either alone or in combination shows an actuating member, in the form of a hydraulic cylinder and a piston assembly mounted on a deck.

One of ordinary skill in the art would not be motivated to combine the teachings of Kobey or Fassauer, either alone or in combination with the teachings of Thagard because, firstly, the mowers of Kobey and Thagard are different types of mowers, one being a household push mower and one being a commercial grade tractor pulled mower. One would not be motivated to replace the handle 54 and cable 52 of Kobey with the hydraulic actuator or cylinder 182, 382 of Thagard in Kobey's household push mower. There is simply no need for a hydraulic circuit in the Kobey mower, and no place on the Kobey housing 36 for all the needed elements of the proposed hydraulic circuit, such as a hydraulic pump and a hydraulic fluid reservoir, in addition to the hydraulic cylinder for actuating the guard.

Of course, Fassauer has no use for a hydraulic cylinder since it does not have a movable guard or cover. Indeed, as previously discussed, adding a movable guard would destroy its air floating capability.

The essence of hindsight is to piece together the disclosures of various prior art references without providing evidence of a suggestion, teaching or motivation to do so. *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614. For this rejection, the Examiner is using applicant's claims as a template to piece together elements in the prior art to defeat the patentability of the claimed invention. This is impermissible. *In re Rouffet*, 149 F.3d 1350, 47 U.S.P.Q. 2d 1453 (Fed. Cir 1998).

Moreover, Kobey, even if modified by Fassauer teaches away from any proposed combination with Thagard. The mowers shown in Kobey, Fassauer and Thagard are so different that one would not be motivated to combine them since they function so differently. As the Federal Circuit observed in *Tec Air, Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999):

"There is no suggestion to combine ... if a reference teaches away from its combination with another source ... 'A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in

a direction divergent from the path that was taken by the applicant ... [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.' *In re Gurley* ... (Fed. Cir. 1994)." *Id.* F.3d at 1360 and USPQ2nd at 1298.

In sum, Kobey teaches the use of a lift up guard which exposes the entire front wall of the housing, and parts of the two adjacent side walls, as shown in Figure 1 thereof. Similarly, Thagard shows a guard design in Figs. 2 and 3 exposing the entire front wall, if not also adjacent side walls (Fig. 3) of the housing. Fassauer does not even teach a movable guard for a mower deck. None of these reference teaches or discloses a guard assembly forming a single corner of a deck, as recited in claims 68, 69, 40, 70, 71 and 19.

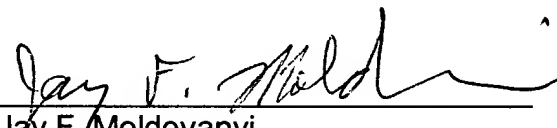
CONCLUSION

In view of the foregoing, Appellant respectfully submits that claims 68, 69, 70, 71, 40 and 19 patentably define over Kobey, Fassauer and Thagard as well as the rest of the cited art. The remaining pending claims also define over the prior art of record for the reasons set forth in Appellant's Appeal Brief of October 14, 2004.

Accordingly, it is respectfully requested that the Examiner's rejections be reversed.

Respectfully submitted,
FAY, SHARPE, FAGAN,
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Date: 11 Mar 2005


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VIII. Appendix of Claims (37 C.F.R. §1.192(c(a))

1-9. (Canceled)

10. (Previously Amended) The mower head of claim 66 wherein said actuating member comprises a hydraulic cylinder and a piston, said cylinder including a chamber surrounding said piston.

11. (Previously Amended) The mower head of claim 65 wherein one of said at least three sides comprises a plurality of angled sections.

12. (Canceled)

13. (Previously Amended) The mower head of claim 65 wherein said deck further comprises a fourth side and at least three side walls, one depending from at least three of said four sides, wherein two of said at least three side walls are rigid.

14-16. (Canceled)

17. (Previously Amended) The mower head of claim 65 wherein one of said at least three sides further comprises an extension which protrudes under said guard.

18. (Canceled)

19. (Previously Amended) The mower head of claim 69 wherein said actuating member comprises a hydraulic cylinder and a piston assembly.

20-38. (Canceled)

39. (Previously Amended) The mower head of claim 67, wherein said flap is a resilient, one-piece flap.

40. (Previously Amended) The mower head of claim 70, wherein said flap is a resilient, one-piece flap.

41-64. (Canceled)

65. (Previously Presented) A mower head comprising:
a deck having at least three sides;
at least one cutting blade rotatably mounted to said deck on an axis extending through said deck, said deck being disposed above and generally parallel to said blade; and
a guard assembly comprising:

a hinge extending between and mounted to two of said at least three sides of said deck at an angle with respect to said two of said at least three sides, and

a guard pivotally attached to said deck via said hinge, wherein a horizontal plane of said guard is parallel to, and spaced from, a horizontal plane of said deck in one orientation of said guard.

66. (Previously Presented) The mower head of claim 65, further comprising an actuating member mounted on said deck.

67. (Previously Presented) The mower head of claim 66, further comprising a flap which depends from said guard.

68. (Currently Amended) A mower head comprising:
a deck comprising:
at least four sides and four corners, and
three side walls, one depending from each of three of said at least four sides, wherein two of said three side walls are rigid;
at least one cutting blade rotatably mounted to said deck on an axis extending through said deck, said deck being disposed above and generally parallel to said blade; and
a guard assembly comprising:
a hinge mounted to and extending at an angle in relation to two adjacent ones of said at least four sides of said deck,
a guard pivotally attached to said deck via said hinge, and
said guard including a plurality of discretely angled sections which angled sections together form a single corner of said deck.

69. (Previously Presented) The mower head of claim 68, further comprising an actuating member mounted on said deck.

70. (Previously Presented) The mower head of claim 68, further comprising a flap which depends from said guard and is movable in relation to said guard.

71. (Previously Presented) The mower head of claim 70, wherein said flap is oriented in a plane spaced apart from a plane of said guard.

72. (Previously Presented) A mower head comprising:
a deck having at least four sides including a front side;
a boom arm to which said deck is mounted, said boom arm being positioned adjacent a first side edge of said mower head;
a guard assembly comprising:
a hinge extending at an angle between said front side and an adjacent one of said sides of said deck; and
a guard pivotally attached to said deck via said hinge, said guard being positioned adjacent a second side edge of said mower head, said second side edge being located opposite said first side edge.

73. (Previously Presented) A mower head comprising:
a deck having four sides;
at least one cutting blade rotatably mounted to said deck on an axis extending through said deck, said deck being disposed above and generally parallel to said blade;
a guard assembly comprising a guard pivotally attached to said deck via a hinge which extends between two adjacent ones of said four sides of said deck such that said guard is positioned in a first corner of said deck; and said guard being selectively pivotable to a position above a plane of said deck; and
wherein said deck comprises a second corner, located adjacent said guard assembly, said second corner comprising two side walls which are rigid and non-moving, wherein a first side of said deck includes both said first corner and said second corner.

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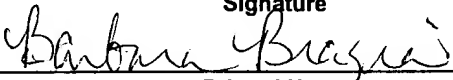
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Signature

Printed Name
Barbara Brazier

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